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Before the
Federal Communications Commission
Washington, D.C. 20554

May 20

MM Docket No. 93-71

In the Matter of

Amendment of Section 73.202(b), RM-8134
Table of Allotments,
FM Broadcast Stations.
(Wickenburg, Arizona)

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 10, 1994;

Released: May 20, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 2246 (1993), issued in response to a petition for rule making filed on behalf of Circle S Broadcasting Co. ("petitioner"), licensee of Station KMEQ(FM),¹ Channel 229A, Wickenburg, Arizona, proposing the substitution of Channel 231C3 for Channel 229A at Wickenburg and modification of its authorization accordingly to specify operation on the higher powered channel. Petitioner filed supporting comments reiterating its intention to apply for Channel 231C3 if allotted to Wickenburg, as requested. Informal comments were filed by Harry E. Craig ("Craig"), counsel for the Town of Wickenburg,² Comments and an addendum were filed by Vulture Peak Restoration Group ("Vulture"). Petitioner filed reply comments and a Supplement to the Reply. No other comments were received.

2. *Background.* As stated in the *Notice*, although petitioner's proposal complies with the minimum distance separation requirements of Section 73.207(b)(1) and (e) of the Commission's Rules, we questioned whether, at its specified site, located 18.6 kilometers (11.6 miles) southwest of the community at coordinates 33-51-31 and 112-53-04, the requirements of Section 73.315 of the Commission's Rules could be met. While petitioner proposed to employ conventional Class C3 facilities (*i.e.*, 25 kW effective radiated power ("ERP") and an antenna of 100 meters height above average terrain ("HAAT") at its proposed site, or its equivalent from a higher elevation, our initial engineering analysis determined that a terrain obstruction of approximately 870 meters (2,854 feet) above mean sea level ("AMSL") lies approximately 8.0 kilometers (5.0 miles) northeast of the

specified site. As the average terrain elevation at the petitioner's proposed site is 723.8 meters AMSL, operation with maximum Class C3 facilities would place the antenna radiation center 823.8 meters AMSL. Since the ground level at the proposed site is 787.4 meters (2,582.7 feet) AMSL, we determined that conventional Class C3 facilities would not provide a 70 dBu signal over the entire community of Wickenburg. Therefore, in order to comply with the requirements of Section 73.315 of the Commission's Rules, we determined that a tower of at least 256.4 meters (841.0 feet) AGL would be required in this instance.

3. Petitioner was advised that the Commission generally will not make an allotment in the absence of a showing to demonstrate the availability of a site that will clear any major intervening obstructions and provide the community with a minimum signal intensity of 70 dBu, citing *Pickneyville, Illinois*, 41 RR 2d 69, 71 (1977). Therefore, as petitioner's proposal did not include specific showings to demonstrate its ability to provide a 3.16 mv/m contour over the entire principal community of Wickenburg, it was requested to provide such information in response to the *Notice*. Moreover, petitioner was requested to provide evidence of FAA clearance for a tower of 256.4 meters (841.0 feet) at its specified site to accommodate its proposal.

4. *Comments.* In its comments petitioner reiterates its intention to apply for Channel 231C3, if allotted to Wickenburg, and included an engineering statement to demonstrate that by employing a tower of 257 meters AGL at its specified site, the requirements of the Commission's technical rules would be met. Petitioner also included a copy of its notification to the FAA seeking approval for the erection of the required tower at its specified site to accommodate its modification request.³ Vulture describes itself as an "ad hoc organization of local Wickenburg citizens and homeowners in whose vicinity the present 499 foot tower of [petitioner's] Station KTIM(AM) is located." Vulture's comments are directed to the environmental impact it believes results from the petitioner's existing tower, as well as the presumed impact the proposed tower for Station KMEQ(FM) would have on the economic and aesthetic values of the members of its group (which it states "represents at least 400-500 people.") Vulture urges that petitioner's modification request be subject to the removal of its existing 499 foot tower for Station KTIM(AM) and its relocation to an area beyond an 11.6 mile radius of Wickenburg. Further, Vulture requests that petitioner's modification proposal be subject to an environmental assessment showing that the proposed antenna to accommodate Channel 231C3 would be environmentally defensible. Vulture also comments that the present 6 kilowatt operation of Station KMEQ(FM) results in interference on television Channels 8 and 10 and speculates that adoption of petitioner's proposal could intensify that interference significantly.

¹ Formerly Station KFMA(FM). The call letters were changed effective March 1, 1993.

² Craig's comments included excerpts from minutes of the Wickenburg Town Council and the Airport Advisory Commission regarding the petitioner's modification proposal. Craig's comments were not filed in accordance with the requirements of Section 1.420(c) of the Commission's Rules and paragraph 4 of the Appendix to the *Notice of Proposed Rule Making*. How-

ever, we reviewed the comments to determine their relative merit since they object to petitioner's proposal based upon technical, aesthetic and environmental concerns. As a result of our review, we conclude that the comments have no bearing on the issue of whether the public interest would be served by an upgraded service at Wickenburg. Therefore, Craig's comments, as well as the petitioner's response thereto, will not be considered in this proceeding.

6. In responsive comments, petitioner states that Vulture's request that the tower for its Station KTIM(AM) be dismantled as a prerequisite to approval of the instant modification request for Station KMEQ(FM) is inappropriate since its AM facility is operational. Therefore, and in the absence of a showing that technical reasons would preclude both operations, petitioner comments that the Commission does not have the jurisdiction to require Station KTIM(AM) to cease operating. Petitioner adds that Vulture's comments concerning the environmental impact of its present operation of Station KTIM(AM) is also inappropriate since it was granted authority by the Commission in 1991 to construct the current 499 foot tower (See File No. BP-911023AC). With respect to Vulture's request that it be required to undertake an environmental assessment to demonstrate that its proposed tower for Station KMEQ(FM) would be environmentally defensible, petitioner remarks that any such concern will be addressed in the application context.

7. As to Vulture's contention regarding the potential hazard to air navigation posed by the proposed tower for Station KMEQ(FM), petitioner comments that such decision lies within the purview of the Federal Aviation Administration ("FAA"). In supplemental comments, petitioner provides evidence of the FAA's determination that its proposed tower of 843 feet above ground level at its specified site would present no hazard to air navigation.³

8. With regard to Vulture's contention that the petitioner's proposed modification operation would exacerbate the degree of interference presently created on television Channels 8 and 10 by its current 6 kW operation, petitioner comments that such argument is speculative at best, and, in any event, potential interference resulting from its operation must be addressed by the affected licensee.

9. *Discussion.* Initially, we find that Vulture's concerns regarding the alleged environmental impact created by the existence of petitioner's 499 foot tower for Station KTIM(AM) is inappropriate for consideration since the Commission granted it authority to construct the tower in 1991. To the extent Vulture also expressed environmental impact concerns with regard to the proposed construction of a 257 meter AGL tower to accommodate the instant modification proposal, that is an inappropriate matter for consideration in the rule making context. Issues relating to environmental assessments are relevant at the application context. See 47 C.F.R. Section 1.1301, *et seq.*

10. As petitioner correctly notes, Vulture's comments regarding alleged interference that its present or proposed operation creates on television Channels 8 and 10 is purely speculative, in the absence of any technical demonstrations by the affected licensees.

11. We also find that petitioner provided suitable information to conclude that it can place a 70 dBu signal over Wickenburg from its proposed site. Moreover, based upon documentation presented in response to the *Notice*, petitioner has demonstrated that it has received FAA approval for the antenna height necessary to accommodate its proposal.

12. In consideration of the above, we find that no valid objection exists to warrant a denial of petitioner's modification request. Therefore, we believe the public interest would be served by substituting Channel 231C3 for Channel 229A at Wickenburg since it could provide the community with an expanded coverage area FM service.

13. As indicated in the *Notice*, Channel 231C3 can be allotted to Wickenburg at the petitioner's proposed site, located 18.6 kilometers (11.6 miles) southwest of the community at coordinates 33-51-31 and 112-53-04, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules. Additionally, as Wickenburg is located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government to the proposed allotment of Channel 231C3 to that community was obtained.

14. In accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Circle S Broadcasting Co. for Station KMEQ(FM) to specify operation on Channel 231C3 in lieu of Channel 229A at Wickenburg, Arizona.

15. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 27, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Wickenburg, Arizona	231C3, 287C1

16. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Circle S Broadcasting Co. for Station KMEQ(FM) (File No. BLH-920922KC), IS MODIFIED to specify operation on Channel 231C3 in lieu of Channel 229A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

17. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to

³ According to the FAA's aeronautical study, in reaching a determination, it evaluated the impact of the proposed structure for Station KMEQ(FM) on visual and instrument flight procedures, both terminal and enroute, navigational aids, existing and

proposed public use aeronautical facilities, as well as the cumulative impact of the proposed structure with other proposed or existing structures.

implement the change in community of license and/or upgrade. As a result of this proceeding, Circle S Broadcasting Co., licensee of Station KMEO(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade at Wickenburg, Arizona.

18. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

19. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau